

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 4779 OF 2014

IN

CRIMINAL APPLICATION NO. 5028 OF 2012

Shaikh Mujtaba Rafiq S/o. Abdul Wahab,
Age : 47 years, Occu. Business,
R/o. Times Colony, Aurangabad.

... Applicant

VERSUS

1. The State of Maharashtra.

2. Asif Khan S/o. Abdul Samad Khan,
Age : 50 years, Occu. Business,
R/o. Plot No. 10, Sajid Fort, Juna Bazar,
Dist. Aurangabad.

... Respondent

.....
Shri. S. G. Laddha, Advocate for the applicant
Mr S. J. Salgare, APP for respondent/State
Mr J. V. Deshpande, Advocate for respondent No. 2
.....

CORAM : N. W. SAMBRE, J.

DATE : 13TH JANUARY, 2016.

PER COURT:

. This is an application under Section 439(2) of the Code of Criminal Procedure for cancellation of bail, which was granted by this Court on 28th February, 2013 in Criminal Application No. 5028 of 2012.

2. The brief story of the prosecution as against present non-applicant No. 2 is as under:

That, non-applicant No. 2 herein was shown to be an accused in Crime No. 71 of 2011 registered on 15th March, 2011 for the offences punishable under Sections 307, 323, 504, 435 read with 34 of the Indian Penal Code. The sessions trial has already commenced.

3. The bail application moved by non-applicant No. 2 herein came to be rejected time and again including by this Court, however, by order dt. 28th February, 2013, same came to be allowed by this Court on following conditions.

- (i) The accused/applicant be released on furnishing a P.R. bond and surety in the sum of Rs. 15,000/- (Rupees Fifteen Thousand);
- (ii) The accused/applicant shall not commit an offense similar to the offense of which he is accused or suspected, of the commission of which he is suspected.
- (iii) The accused/applicant shall not directly or indirectly make any inducement, threat or promise to any person/s acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any Police Officer or tamper with the evidence. The accused/applicant will not commit any offence.
- (iv) The accused/applicant to attend the Sessions Case scrupulously without claiming any accommodation. He shall not influence the witnesses of the said case and particularly the eye-witnesses.

- (v) The applicant/accused to record attendance with the Investigator on every Sunday between 3.00 to 6.00 p.m. for a period of six months.

4. It is brought to the notice of this Court that, though non-applicant No. 2 was released on bail by this Court in the said offence on the condition that he shall not commit an offense similar to the offense of which he is accused or suspected, however, non-applicant No. 2 has committed an offence punishable under Sections 307, 341, 504 read with 34 of the Indian Penal Code, vide Crime No. 26 of 2014 registered on 18th October, 2014 i.e. after he was released on bail. The next submission by the complainant for cancellation of bail is that, while Criminal Application No. 5028 of 2012 was moved, bail was granted to non-applicant No. 2 but the said non-applicant has suppressed the fact from this Court about moving of Special Leave to Appeal (Criminal) No. 25423 of 2011 for grant of bail, which was withdrawn by his counsel before the Apex Court as is apparent from the order dt. 9th January, 2012. Shri. Ladda would urge that, the said fact as regards withdrawal of the bail application before the Apex Court is suppressed by the non-applicant from this Court while praying bail. The next submission is that, when the application for grant of bail was allowed, an incorrect statement was made that the complainant and other accused are prolonging the trial whereas; according to Shri. Laddha, the learned counsel for applicant, the trial is being protracted by non-applicant No. 2 herein by filing applications for

adjournments though the recording of evidence in the matter has commenced. He submits that the said applications, copies whereof to that effect, are placed on record.

5. In addition, Shri. Ladda would urge that non-applicant No. 2 has moved before this Court for quashing of FIR lodged against him vide Criminal Application No. 1199 of 2013 and in that application, the non-applicant in para 40, in clear terms, admitted to have committed the crime in question. According to him, in view of the above, the bail granted to non-applicant No. 2 needs to be cancelled.

6. Shri. Deshpande, learned counsel for non-applicant No. 2 seeks an adjournment so as to place on record certain documents, however, his request is rejected in view of the past conduct of non-applicant No. 2 of avoiding the present proceedings and the adjournment of the matter time and again. In fact, this Court has observed last chance in the matter.

7. While opposing the case on merit, Shri. Deshpande would urge that the non-applicant holds interest in valuable immovable property about which the property dispute is going on between the applicant and non-applicant. According to him, so as to twist the arms of the non-applicant, the non-applicant has been falsely implicated in the crime by the applicant. He would then urge that the offence as is claimed to have been registered against

the non-applicant punishable under Section 307 of the Indian Penal Code vide Crime No. 26 of 2014, is at the behest of the applicant only, as the applicant hatched conspiracy to falsely implicate the non-applicant in crime in question. He would then urge that there was no intention on the part of the non-applicant to suppress the order passed by the Apex Court rejecting the bail application, however, it so happened inadvertently and instructions to that effect were not properly given to the Lawyer. According to him, the other offences as are registered under the provisions of IT Act cannot have any bearing over the issue of cancellation of bail. He would then urge that the application needs to be rejected.

8. The learned APP submits that, the offence subsequent to offence bearing Crime No. 26 of 2014, is registered against non-applicant No. 2. He would then urge that, the factual matrix and the record depicts that the filing of the earlier bail application and rejection of the same was not disclosed by the non-applicant before this Court. He submits that this Court may pass an appropriate order in the matter.

9. Having bestowed my thoughts to the submissions made, it is required to be noted that the present non-applicant filed Special Leave to Appeal (Criminal) No. 25423 of 2011 under Section 439 of the Code of Criminal Procedure in the very crime seeking regular bail. However, it appears that as the Apex Court was not inclined to grant bail, the counsel for

non-applicant No. 2 had withdrawn the same. He thereafter preferred an application before this Court vide Criminal Application No. 5028 of 2012, which came to be allowed on 28th February, 2013. Perusal of the application for bail does not disclose the fact about moving before the Apex court with a prayer for grant of bail and the withdrawal of the said prayer. Had it been disclosed by the non-applicant before this Court about withdrawal of his application before the Apex Court, the result might have been otherwise.

10. Apart from above, it is required to be noted that non-applicant No. 2 was released on bail on certain conditions that he shall not commit similar offence. The bail was granted to non-applicant No. 2 in the crime, which is punishable under Sections 307, 341, 504 read with 34 of the Indian Penal Code vide Crime No. 71 of 2011, however, it is not disputed that the non-applicant subsequent to an earlier crime has committed an offence punishable under Sections 307, 341, 504 read with 34 of IPC vide Crime No. 26 of 2014. As such, it could be easily inferred that the condition as was incorporated by this Court in the order dt. 28th February, 2013 of not to indulge in an offence similar to the one already committed, was breached by non-applicant No. 2 herein. Shri. Deshpande while trying to make out a case for rejection of this application has urged that the non-applicant has not been convicted in either of the crimes though appears to be impressive, however, it is required to be noted that this Court while incorporating the condition for grant of bail has, in clear terms, observed that, non-applicant No. 2 shall not

commit an offense similar to the offense of which he is accused. Apart from above, Shri. Deshpande was right in submitting that crime is registered under the provisions of I.T. Act, he will be hardly treated as jumping of the bail conditions.

11. So far as submission of the learned counsel for the applicant as regards the admission given by the present non-applicant regarding commission of crime is concerned, in my opinion, it will be inappropriate to accept the said submission that the non-applicant has accepted the same rather non-applicant No. 2 is facing trial on merit.

12. In view of above, it will be appropriate, in my opinion, to allow the present application. As such, I pass the following order.

ORDER

- (i) The bail ordered by this Court on 28th February, 2013 in Criminal Application No. 5028 of 2012 is cancelled on the ground of jumping the bail conditions and suppression of fact about the withdrawal of the earlier bail application before the Supreme Court in the same Crime.
- (ii) The applicant shall surrender to his bail bonds forthwith.

(iii) At this stage, the learned counsel for the non-applicant Shri. Deshpande submits that, this order be stayed for a period of four weeks. In my opinion, it will be appropriate to grant said request as the non-applicant is on bail since 28th February, 2013. As such, the effect and operation of the instant order shall remain stayed for a period of four weeks from today.

13. Criminal Application for cancellation of bail stands allowed in above terms.

[N. W. SAMBRE]
JUDGE

sgp